



January 29, 2016

HOUSE BILL No. 1407

DIGEST OF HB 1407 (Updated January 27, 2016 11:17 am - DI 125)

Citations Affected: IC 12-7; IC 12-11.

Synopsis: ABLE authority and board. Creates the achieving a better life experience (ABLE) authority (authority) and the ABLE board (board) of the authority. Requires the authority to establish a qualified ABLE program under which a person may make contributions for a taxable year for the benefit of an eligible individual to an ABLE account to meet the qualified disability expenses of the designated beneficiary in compliance with federal law. Sets forth duties and powers of the authority and the board. Establishes a general operating fund, endowment fund, and trust fund.

Effective: July 1, 2016.

**Olthoff, Bacon, Schaibley,
Shackleford**

January 19, 2016, read first time and referred to Committee on Rules and Legislative Procedures. Reassigned to Committee on Family, Children and Human Affairs.
January 28, 2016, amended, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.

HB 1407—LS 6970/DI 92



January 29, 2016

Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1407

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 12-7-2-0.5 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2016]: **Sec. 0.5. "ABLE account", for purposes of IC 12-11-14,**
- 4 **has the meaning set forth in IC 12-11-14-1.**
- 5 SECTION 2. IC 12-7-2-18.5 IS ADDED TO THE INDIANA CODE
- 6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 7 1, 2016]: **Sec. 18.5. "Authority", for purposes of IC 12-11-14, has**
- 8 **the meaning set forth in IC 12-11-14-2.**
- 9 SECTION 3. IC 12-7-2-22, AS AMENDED BY P.L.145-2014,
- 10 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 11 JULY 1, 2016]: Sec. 22. "Board" means the following:
- 12 (1) For purposes of IC 12-10-10, IC 12-10-10.5, and IC 12-10-11,
- 13 the community and home options to institutional care for the
- 14 elderly and disabled board established by IC 12-10-11-1.
- 15 (2) **For purposes of IC 12-11-14, the meaning set forth in**
- 16 **IC 12-11-14-3.**
- 17 (2) (3) For purposes of IC 12-12-7-5, the meaning set forth in

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1 IC 12-12-7-5(a).

2 ~~(3)~~ **(4)** For purposes of IC 12-15-35, the meaning set forth in
3 IC 12-15-35-2.

4 SECTION 4. IC 12-7-2-58.5 IS ADDED TO THE INDIANA CODE
5 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
6 1, 2016]: **Sec. 58.5. "Designated beneficiary", for purposes of**
7 **IC 12-11-14, has the meaning set forth in IC 12-11-14-4.**

8 SECTION 5. IC 12-7-2-76, AS AMENDED BY P.L.145-2014,
9 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2016]: Sec. 76. (a) "Eligible individual", for purposes of:

11 (1) IC 12-10-10, has the meaning set forth in IC 12-10-10-4; ~~and~~

12 (2) IC 12-10-10.5, has the meaning set forth in IC 12-10-10.5-3;
13 **and**

14 **(3) IC 12-11-14, has the meaning set forth in IC 12-11-14-5.**

15 (b) "Eligible individual" has the meaning set forth in
16 IC 12-14-18-1.5 for purposes of the following:

17 (1) IC 12-10-6.

18 (2) IC 12-14-2.

19 (3) IC 12-14-18.

20 (4) IC 12-14-19.

21 (5) IC 12-15-2.

22 (6) IC 12-15-3.

23 (7) IC 12-16-3.5.

24 (8) IC 12-20-5.5.

25 SECTION 6. IC 12-7-2-154.4 IS ADDED TO THE INDIANA
26 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
27 [EFFECTIVE JULY 1, 2016]: **Sec. 154.4. "Qualified ABLE**
28 **program", for purposes of IC 12-11-14, has the meaning set forth**
29 **in IC 12-11-14-6.**

30 SECTION 7. IC 12-7-2-154.6 IS ADDED TO THE INDIANA
31 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
32 [EFFECTIVE JULY 1, 2016]: **Sec. 154.6. "Qualified disability**
33 **expense", for purposes of IC 12-11-14, has the meaning set forth in**
34 **IC 12-11-14-7.**

35 SECTION 8. IC 12-11-14 IS ADDED TO THE INDIANA CODE
36 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
37 JULY 1, 2016]:

38 **Chapter 14. Achieving a Better Life Experience (ABLE)**
39 **Program**

40 **Sec. 1. As used in this chapter, "ABLE account" refers to an**
41 **achieving a better life experience (ABLE) account established by**
42 **an eligible individual that:**



- (1) is maintained under a qualified ABLE program; and
- (2) meets the requirements of Section 529A of the Internal Revenue Code.

Sec. 2. As used in this chapter, "authority" refers to the achieving a better life experience (ABLE) authority established by section 8 of this chapter.

Sec. 3. As used in this chapter, "board" refers to the ABLE board of the authority established by section 9 of this chapter.

Sec. 4. As used in this chapter, "designated beneficiary" means an eligible individual who has established an ABLE account and is the owner of the account.

Sec. 5. As used in this chapter, "eligible individual" means an individual who during a taxable year:

- (1) is entitled to benefits based on blindness or disability under Title II or Title XVI of the federal Social Security Act and the blindness or disability occurred before the individual became twenty-six (26) years of age; or
- (2) has a disability certification that has been filed as set forth in Section 529A of the Internal Revenue Code.

Sec. 6. As used in this chapter, "qualified ABLE program" refers to the achieving a better life experience (ABLE) program established under this chapter under which a person may make contributions for a taxable year for the benefit of an eligible individual to an ABLE account to meet the qualified disability expenses of the designated beneficiary in compliance with Section 529A of the Internal Revenue Code.

Sec. 7. As used in this chapter, "qualified disability expense" means any expenses related to the eligible individual's blindness or disability that is made for the benefit of an eligible individual who is the designated beneficiary, including the following expenses:

- (1) Education.
- (2) Housing.
- (3) Transportation.
- (4) Employment training and support.
- (5) Assistive technology and personal support services.
- (6) Health.
- (7) Prevention and wellness.
- (8) Management and administration.
- (9) Legal fees.
- (10) Oversight and monitoring.
- (11) Funeral and burial.
- (12) Other expenses approved by the federal government for



1 a qualified ABLE program.

2 Sec. 8. (a) The achieving a better life experience (ABLE)
3 authority is created. The authority is a body corporate and politic.

4 (b) The authority:

5 (1) is not an agency of the state; and

6 (2) is an instrumentality of the state performing essential
7 governmental functions.

8 (c) The authority shall establish a qualified ABLE program.

9 (d) Because the management and operation of a qualified ABLE
10 program and all funds and ABLE accounts established under this
11 chapter constitute the performance of an essential public function,
12 the following are exempt from taxation by the state and by any
13 political subdivision of the state:

14 (1) The authority's management and operations.

15 (2) The authority's property and assets.

16 (3) All property and assets held by or for the authority except
17 individual ABLE accounts.

18 (4) The investment income and earnings (whether interest,
19 gains, or dividends) on:

20 (A) the authority's property and assets; and

21 (B) all property and assets held by or for the authority;
22 including all funds and accounts established under this article
23 except individual ABLE accounts.

24 (e) The authority may:

25 (1) contract for the purchase of supplies, goods, or services;
26 and

27 (2) acquire and dispose of any real or personal property
28 without regard to IC 4-13 and IC 5-22.

29 (f) The authority may contract with public or private entities or
30 persons for the provision of all or any part of the services the
31 board considers necessary for the management and operation of
32 the authority, including the qualified ABLE program and all funds
33 and accounts of the authority.

34 (g) The authority is a public agency for purposes of IC 5-14-1.5
35 and IC 5-14-3. The board is a governing body for purposes of
36 IC 5-14-1.5.

37 (h) The:

38 (1) data;

39 (2) information; and

40 (3) records, including:

41 (A) medical records; and

42 (B) records containing personally identifying information;



1 relating to a designated beneficiary and a contributor to an ABLE
 2 account are confidential under IC 5-14-3 and may not be disclosed
 3 by the authority unless required by federal or state law or ordered
 4 by a court.

5 Sec. 9. (a) The ABLE board of the authority is established. The
 6 board consists of the following:

7 (1) The following three (3) ex officio members:

8 (A) The treasurer of state.

9 (B) The secretary of family and social services.

10 (C) The budget director.

11 (2) Four (4) appointed members, each of whom:

12 (A) is appointed by the governor; and

13 (B) either:

14 (i) has knowledge, skill, and experience in academic,
 15 business, financial, disability, or health fields; or

16 (ii) is an eligible individual or a family member of an
 17 eligible individual.

18 (b) During an appointed member's term of service on the board,
 19 the appointed member of the board may not be an official or
 20 employee of the state.

21 (c) Not more than three (3) of the appointed members of the
 22 board may belong to the same political party.

23 (d) An appointed member serves a four (4) year term. An
 24 appointed member shall hold over after the expiration of the
 25 member's term until the member's successor is appointed and
 26 qualified.

27 (e) The governor may reappoint an appointed member of the
 28 board.

29 (f) A vacancy shall be filled for the balance of an unexpired term
 30 in the same manner as the original appointment.

31 (g) The treasurer of state shall serve as chairperson of the
 32 board. The board shall annually elect one (1) of its ex officio
 33 members as vice chairperson, and may elect any other officer that
 34 the board desires. The board shall meet at the call of the
 35 chairperson and as provided in the bylaws of the authority.
 36 Meetings of the board may be held anywhere in Indiana.

37 (h) The governor may remove an appointed member for
 38 misfeasance, malfeasance, willful neglect of duty, or other cause
 39 after notice and a public hearing, unless the member expressly
 40 waives the notice and hearing in writing.

41 (i) An appointed member of the board is not entitled to the
 42 minimum salary per diem provided by IC 4-10-11-2.1(b). Each



1 appointed member is, however, entitled to reimbursement for
 2 traveling expenses and other expenses actually incurred in
 3 connection with the member's duties.

4 (j) An ex officio member of the board is entitled to
 5 reimbursement for traveling expenses and other expenses actually
 6 incurred in connection with the member's duties.

7 (k) An ex officio member of the board may designate a person
 8 to serve as an ex officio member of the board in the absence of the
 9 ex officio member.

10 (l) Five (5) members of the board are a quorum for:

- 11 (1) the transaction of business at a meeting of the board; or
- 12 (2) the exercise of a power or function of the authority.

13 (m) The affirmative vote of a majority of all the members of the
 14 board who are present is necessary for the authority to take action.
 15 A vacancy in the membership of the board does not impair the
 16 right of a quorum to exercise all the rights and perform all the
 17 duties of the authority. An action taken by the board under this
 18 article may be authorized by:

- 19 (1) resolution at any regular or special meeting; or
- 20 (2) unanimous consent of all the members who have not
 21 abstained.

22 A resolution takes effect immediately upon adoption and need not
 23 be published or posted.

24 Sec. 10. (a) The board may:

- 25 (1) employ a manager, who is not a member of the board; and
- 26 (2) delegate necessary and appropriate functions and
 27 authority to the manager.

28 (b) The board has the powers necessary and appropriate to
 29 carry out and effectuate the purposes of this chapter, including the
 30 following:

31 (1) To develop and implement a qualified ABLE program for
 32 Indiana through:

- 33 (A) rules adopted under IC 4-22-2 or emergency rules
 34 adopted in the manner provided under IC 4-22-2-37.1; or
- 35 (B) rules, guidelines, procedures, or policies established by
 36 the board.

37 (2) To conform the qualified ABLE program to meet the
 38 requirements of Section 529A of the Internal Revenue Code
 39 and all applicable federal laws and regulations.

40 (3) To retain professional services, including the following:

- 41 (A) Advisers and managers, including investment advisers.
- 42 (B) Custodians and other fiduciaries.



- 1 (C) Accountants and auditors.
- 2 (D) Consultants or other experts.
- 3 (E) Actuarial services providers.
- 4 (F) Attorneys.
- 5 (4) To establish minimum ABLE account deposit amounts
- 6 (both initial and periodic).
- 7 (5) To employ persons, if the board chooses, and as may be
- 8 necessary, and to fix the terms of employment.
- 9 (6) To recommend legislation to the governor and the general
- 10 assembly.
- 11 (7) To apply for designation as a tax exempt entity under the
- 12 Internal Revenue Code.
- 13 (8) To sue and be sued.
- 14 (9) To provide or facilitate provision of benefits and incentives
- 15 for the benefit of qualified beneficiaries.
- 16 (10) To conform the qualified ABLE program to federal tax
- 17 advantages or incentives, to the extent consistent with the
- 18 purposes and objectives of this chapter.
- 19 (11) To charge, impose, and collect administrative fees and
- 20 service charges in connection with any agreement, contract,
- 21 or transaction under a qualified ABLE program.
- 22 (12) To have perpetual succession.
- 23 (13) To establish policies and procedures to govern
- 24 distributions from ABLE accounts that are not:
- 25 (A) made on account of the death or disability of an
- 26 account beneficiary; or
- 27 (B) rollovers.
- 28 (14) To establish penalties for withdrawals of money from
- 29 ABLE accounts that are not used exclusively for a qualified
- 30 disability expense of an account beneficiary unless a
- 31 circumstance described in subdivision (13) applies.
- 32 (15) To establish policies and procedures regarding the
- 33 transfer of individual ABLE accounts and the designation of
- 34 substitute account beneficiaries.
- 35 (16) To establish policies and procedures for withdrawal of
- 36 money from ABLE accounts for, or in reimbursement of, a
- 37 qualified disability expense.
- 38 (17) To enter into agreements with ABLE account owners,
- 39 account beneficiaries, and contributors, with the agreements
- 40 naming:
- 41 (A) the account owner; and
- 42 (B) the account beneficiary.



(18) To establish ABLE accounts for account beneficiaries. However, the authority shall establish a separate ABLE account for each account beneficiary.

(19) To enter into agreements with financial institutions relating to ABLE accounts as well as deposits, withdrawals, penalties, allocation of benefits or incentives, and transfers of accounts, account owners, and account beneficiaries.

(20) To develop marketing plans and promotional material.

(21) To enter into agreements with other states to allow either:

(A) Indiana residents to participate in a plan operated by a contracting state with a qualified ABLE program; or

(B) residents of contracting states to participate in the Indiana ABLE program.

Sec. 11. (a) The authority shall do the following:

(1) Provide the board and each member, officer, employee, consultant, counsel, and agent of the authority or the board a defense in a suit arising out of the performance of duties for or on behalf of the authority or the board, if the board determines that the duties were provided in good faith.

(2) Hold a person described in subdivision (1) or the board harmless from any liability, cost, or damage in connection with an action arising out of the performance of duties for or on behalf of the authority or the board, including the payment of any legal fees, except where the liability, cost, or damage is predicated on, or arises out of, bad faith of the person or the board, or is based on the person's or board's malfeasance in the performance of duties.

(b) The authority shall prepare an annual report for the qualified ABLE program and transmit the annual report to the governor and in an electronic format under IC 5-14-6 to the general assembly. The authority shall make available, upon request, a copy of the annual report to qualified beneficiaries, account owners, and the public.

Sec. 12. (a) The authority may accept monetary gifts, bequests, donations, and devises:

(1) as trustees for the maintenance, use, or benefit of the authority, the qualified ABLE program, or the endowment fund; or

(2) to be administered for other public or charitable purposes for the benefit or use of ABLE account owners or ABLE account beneficiaries.



(b) The authority may receive, accept, hold, administer, and use any monetary gift, bequest, donation, or devise in accordance with the terms, conditions, obligations, liabilities, and burdens imposed on the gift, bequest, donation, or devise if, in the judgment of the board, the action is in the best interest of the authority, the qualified ABLE program, the endowment fund, ABLE account owners, ABLE account contributors, or ABLE account beneficiaries, as applicable.

Sec. 13. A person designated by resolution of the authority:

(1) shall keep a record of the proceedings of the authority;

(2) shall be custodian of:

(A) all books, documents, and papers filed with the authority; and

(B) the minutes book or journal of the authority; and

(3) may copy all minutes and other records and documents of the authority and may certify that the copies are true copies.

A person who deals with the authority may rely upon the certification under subdivision (3).

Sec. 14. Before the adoption and implementation of a qualified ABLE program:

(1) the chairperson;

(2) the vice chairperson;

(3) the manager; and

(4) any officer elected by the authority or member of the authority authorized by resolution to handle funds or sign checks;

shall execute a surety bond in the penal sum of one hundred thousand dollars (\$100,000). The surety bond must be conditioned upon the faithful performance of the duties of the office of the principal and must be executed by a surety company authorized to transact business in Indiana. The authority shall pay the cost of the bonds.

Sec. 15. Notwithstanding any other law, it is not a conflict of interest or violation of any other law for a person to serve as a member of the authority. However, a member shall disclose a conflict of interest relating to actions of the authority as required and in a manner provided by IC 35-44.1-1-4.

Sec. 16. The following are established:

(1) The general operating fund.

(2) The endowment fund.

(3) The trust fund and, in the trust fund, the following:

(A) The administrative account.



1 (B) The program account.

2 Sec. 17. The authority shall establish and implement investment
3 policies in accordance with IC 5-13 for the following:

4 (1) Money in the general operating fund.

5 (2) Money in the administrative account.

6 (3) Any other money of the authority other than money in:

7 (A) the endowment fund; and

8 (B) the program account.

9 Sec. 18. The board shall establish and implement investment
10 policies for money in:

11 (1) the endowment fund; and

12 (2) the program account;

13 for investment in the manner provided by IC 30-4-3-3.

14 Sec. 19. The trust fund and other property of the authority must
15 be preserved, invested, and expended only under this article and
16 may not be used for any other purpose. The trust fund shall be held
17 in trust for account owners and account beneficiaries.

18 Sec. 20. Criteria for management of assets in the trust fund,
19 including investment of assets, must provide for both asset
20 protection and income growth while providing for the actuarial
21 soundness of the trust fund.

22 Sec. 21. (a) General operating, administrative, and capital
23 expenses of the authority may be paid from amounts appropriated
24 for those purposes by the general assembly. Appropriations must
25 be deposited in either the administrative account or the general
26 operating fund, as the board determines to be appropriate.

27 (b) Money in the administrative account shall be used first to
28 pay the general operating, administrative, and capital expenses of
29 the authority. Before money in the program account may be used
30 for these expenses, the authority must exhaust all other funds
31 available to the authority, including money in the endowment fund
32 and the administrative account.

33 Sec. 22. (a) The funds, accounts, management, and operations
34 of the authority are subject to annual audit by an independent
35 public accounting firm retained by the board.

36 (b) The authority shall promptly transmit copies of each annual
37 audit to the governor and in an electronic format under IC 5-14-6
38 to the general assembly. Upon request, the authority shall make
39 available copies of the audit to qualified beneficiaries, account
40 owners, and the public.

41 Sec. 23. (a) All ABLE accounts and all earnings or interest on
42 ABLE accounts are exempt from taxation in Indiana to the extent



1 that those accounts, earnings, and interest are exempt from federal
2 taxation under the Internal Revenue Code, subject to any penalties
3 that are established for a qualified ABLE program under this
4 chapter.

5 (b) Money deposited in an ABLE account by the account owner
6 or a contributor and investment returns on an account are the
7 property of the account owner.

8 (c) Funds held in an ABLE account that may be established
9 under this chapter may not be used by an account owner or
10 account beneficiary as security for a loan.

11 (d) Funds held in an ABLE account are exempt from creditors
12 and:

13 (1) are not liable to attachment, levy, garnishment, or other
14 process; or

15 (2) may not be seized, taken, appropriated, or applied by any
16 legal or equitable process or operation of law to pay any debt
17 or liability of any contributor or beneficiary.

18 However, the state of residency of the designated beneficiary of an
19 ABLE account is a creditor to the account in the event of the death
20 of the designated beneficiary.

21 (e) Funds held in an ABLE account may not be included in
22 determining income eligibility of the designated beneficiary for
23 state and local assistance programs.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Family, Children and Human Affairs, to which was referred House Bill 1407, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1407 as introduced.)

FRIZZELL

Committee Vote: yeas 10, nays 0.

